

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSHUA GUILLERMO,

Plaintiff,

-v-

LUCID USA, INC. *et al.*,

Defendants.

24 Civ. 5735 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

On July 17, 2024, plaintiff Joshua Guillermo filed the Complaint in this negligence action in state court against defendants Lucid USA, Inc. and Kevin A. Smith (collectively, “Lucid”) and Tersonterson Transport, LLC and Wilterson Victor (collectively, “Tersonterson”). Dkt. 1. On July 30, 2024, Lucid removed the case to this Court based on diversity jurisdiction. *Id.*

On September 27, 2024, Lucid moved to dismiss the claim against it for failure to state a claim, under Federal Rule of Civil Procedure 12(b)(6). Dkt. 8. On September 30, 2024, the Court ordered Guillermo to amend its Complaint or oppose defendant’s motion by October 18, 2024. On October 4, 2024, Tersonterson filed an answer to the claim against it that asserted crossclaims against Lucid. Dkt. 12. On October 24, 2024, Lucid responded. Dkt. 13.

On October 29, 2024, nearly two weeks after the filing deadline, Guillermo attempted to file an amended complaint. Dkt. 15. On October 30, 2024, however, the Clerk of Court issued a notice of deficiency and directed plaintiff to refile its complaint to ECF. *Id.* Guillermo did not do so. On November 13, 2024, the Court *sua sponte* granted a courtesy extension to Guillermo, directing him to file his amended complaint or an opposition to the motion to dismiss by Friday,

November 15, 2024, and notifying him that a failure to respond would result in the Court's treating the motion as unopposed. Dkt. 16. Guillermo again did not do so.

Notwithstanding the absence of opposition, the Court's assessment is that it cannot grant the pending motion to dismiss the claim against Lucid based on the limited materials cognizable on a motion under Rule 12(b)(6). **The Court thus schedules an initial pretrial conference with all parties for next Thursday, January 30, 2025, at 3 p.m.** The purpose of the conference will be set a schedule for the case going forward, including whether to sequence discovery so as to enable an early summary judgment motion on the issues on which Lucid had sought to move dismiss, relating to the ownership of the Lucid vehicle and Guillermo's employment. **The Court expects counsel for all three parties—Guillermo, Lucid, and Tersonterson—to participate in the conference.**

The parties should call into the Court's dedicated conference line at (855) 244-8681, and enter Access Code 2318-315-0661, followed by the pound (#) key. **Counsel are directed to review the Court's Individual Rules and Practices in Civil Cases**, found at <https://nysd.uscourts.gov/hon-paul-engelmayer>, for the Court's procedures for telephonic conferences and for instructions for communicating with chambers.

The Court directs counsel for each party to:

- **Confer with each other prior to the conference regarding settlement** and each of the other subjects to be considered at a Federal Rule of Civil Procedure 16 conference.
- **Prepare a Civil Case Management Plan and Scheduling Order** in accordance with the Court's Individual Rules, available at

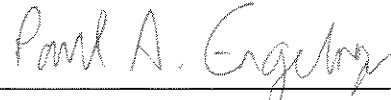
<https://www.nysd.uscourts.gov/hon-paul-engelmayer>, to be submitted to the Court no later than **January 27, 2025**.

- **Prepare a joint letter, not to exceed three pages in length**, to be submitted to the Court no later than **January 27, 2025**, addressing the following topics in separate paragraphs: (1) a brief description of the case, including the factual and legal bases for the claim(s) and defense(s), and the history of the case; (2) any contemplated motions; and (3) the prospect for settlement. For the Court's convenience, the parties are requested to set forth the date and time of the conference in the opening paragraph of the letter.
- Register as filing users in accordance with the Procedures for Electronic Case Filing prior to the date of the initial pretrial conference.
- Email to EngelmayerNYSChambers@nysd.uscourts.gov, no later than twenty-four hours before the conference, the names of any counsel who wish to enter an appearance at the conference, and the number from which each counsel will be calling.

If this case has been settled or otherwise terminated, counsel are not required to appear, provided that a stipulation of discontinuance, voluntary dismissal, or other proof of termination is sent prior to the date of the conference via e-mail to the Orders and Judgment Clerk at the following e-mail address: orders_and_judgments@nysd.uscourts.gov.

Requests for adjournment may be made only in a writing received no later than two business days before the conference. The written submission must comply with Section 1.E of the Court's Individual Rules. Unless counsel are notified that the conference has been adjourned, it will be held as scheduled.

SO ORDERED.

A handwritten signature in cursive script, reading "Paul A. Engelmayer", written in dark ink.

PAUL A. ENGELMAYER
United States District Judge

Dated: January 21, 2025
New York, New York